

Case Name: *London Borough of Haringey v Secretary of State for Housing Communities and Local Government & Anor* [2019] EWHC 3000 (Admin) (07 November 2019)

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Commentary: An Inspector had allowed an appeal against an enforcement notice on the ground that the installation of UPVC windows did not constitute development under section 55 of the Town and Country Planning Act 1990 ("TCPA 1990"). The decision turned on the meaning of "building" for the purposes of section 55 and whether the windows "materially affected the external appearance of the building".

The Court allowed the Council's appeal against the Inspector's decision.

Section 55(2)(a)(ii) of the TCPA 1990 provides that "the carrying out of [...] works which [...] do not materially affect the external appearance of the building" shall not be taken to involve development. The Inspector had decided that "the building" for the purposes of section 55(2)(a) of the TCPA 1990 was the whole terrace of three houses rather than just the ground floor flat in which the windows had been installed or the single house within the terrace of which the flat formed a part. The Court held that the Inspector had misunderstood *Church Commissioners v Secretary of State for the Environment* [1995] 71 P&CR 7 in which "the building" was taken to refer to a whole shopping mall rather than a single retail unit because this case concerned the meaning of the planning unit for the purposes of an argument about material change of use rather than the meaning of "building" for the purposes of section 55(2)(a) of the TCPA 1990. This had been influential in the Inspector's reasoning process and there was no other reasoning explaining why it was appropriate to treat the "building" as the entire block of terraced houses, rather than the individual house or flat.

The Inspector also referred to *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 in which the Judge (Mr Southwell QC) stated that the effect on the external appearance of a building must be judged for its materiality in relation to the building as a whole, and not by reference to a part of the building taken in isolation. However, the judge in this case disagreed with any suggestion arising from this that it is incorrect as a matter of law to consider part of the building; Mr Southwell QC did not refer to the fact that s.336 of the TCPA 1990 incorporates "part of a building" within the definition of "the building". The judge therefore concluded that the Inspector had misdirected himself and found for the Claimant on this ground,

The judge also held that the Inspector's reasoning was somewhat unclear in relation to the effect on the exterior of the building and found that it was difficult not to conclude that the Inspector had taken into account the surrounding area in judging the effect of the works as he had considered the number of other properties in the vicinity which had installed PVC windows. This was not a lawful application of the test in section 55(2)(a)(ii) of the TCPA 1990 as the decision maker should not have regard to the impact on the external appearance of anything other than the building in question. The second ground was therefore also made out and the appeal allowed.

Case summary prepared by Susannah Herbert